

1 SCHEER LAW GROUP, LLP
SPENCER P. SCHEER #107750
2 JOSHUA L. SCHEER #242722
REILLY D. WILKINSON #250086
3 JONATHAN SEIGEL #168224
ALEXANDRIA C. CARRAHER #299258
4 155 N. Redwood Drive, Suite 100
San Rafael, CA 94903
5 Telephone: (415) 491-8900
Facsimile: (415) 491-8910
6 BSI.100-965S

7 Attorneys for CAM XVIII TRUST, its successors and/or assignees

8 UNITED STATES BANKRUPTCY COURT FOR
9 THE NORTHERN DISTRICT OF CALIFORNIA
10 SANTA ROSA DIVISION

11 In re:

Bk. No. 09-12892-AJ

12 BETH WAYNE and DAVID R. WAYNE aka

R.S. No. RDW-782

13 RANDY WAYNE,

Chapter 11

14 Debtors.

**MOTION FOR RELIEF
FROM AUTOMATIC STAY**

Hearing-

Date: April 5, 2017

Time: 9:00 a.m.

Place: Bankruptcy Court

3140 Boeing Ave.

McKinleyville, CA

19 CAM XVIII TRUST, its successors and/or assignees ("Lender" or "Movant"),
20 moves the Court for relief from the Automatic Stay provided by 11 U.S.C. Section 362. This
21 motion seeks an Order terminating the Automatic Stay of 11 U.S.C. Section 362 as to moving
22 party (and the Trustee under the Deed of Trust securing moving party's claim) so that moving
23 party (and its Trustee) may take all steps necessary under State or Federal law to commence or
24 complete its foreclosure under the Deed of Trust and thereafter take possession of the subject
25 real property located at 137 14th Street, Eureka, CA 95501, which is legally described in the
26 Deed of Trust attached to the Declaration of KARIN MURPHY as Exhibit "3" ("**Property**").
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1 In addition, and if applicable, Movant will seek an order waiving the requirements
2 of Federal Rule of Bankruptcy Procedure 4001(a)(3), and California Civil Code § 2924g(d), so
3 that any foreclosure sale may be held without the applicable waiting period specified therein.

4 This motion is brought pursuant to 11 U.S.C. Section 362(d)(1) for "cause" and
5 due to the following:

6 1. The failure of Debtor to make required payments as set forth in the
7 attached Declaration of KARIN MURPHY. Debtors' failure to make required payments
8 provides "cause" for relief from the Automatic Stay.

9 2. In addition, Movant claims that the Debtors are collecting rents on the
10 property without utilizing the rents to pay the monthly debt service.

11 3. The Debtors have failed to provide an accounting of cash collateral being
12 generated from the Property despite a Notice of Security Interest in Rents and Profits being filed
13 with this court on December 8, 2009 ("Notice") in violation of 11 U.S.C. § 363(c)(2). This
14 provides additional cause for relief or in the alternative for adequate protection (*See In re*
15 *Certified Corp.*, 51 B.R. 768, 771 (Bankr. D. Haw., 1985). *See also In re Four Seasons Marine &*
16 *Cycle, Inc.*, 263 B.R. 764, 769 (Bankr. E.D. Texas, 2001));

17 In addition, Movant seeks relief pursuant to 11 U.S.C. Section 362(d)(2) and
18 alleges that in accordance with the information set forth in the attached Declaration of KARIN
19 MURPHY and due to the Debtors' failure to make required payments, that Debtors do not have
20 any realistic hope for a reorganization, and that there is insufficient equity present in the subject
21 real property to justify the continuance of the Automatic Stay. The value of the Property is
22 approximately \$265,000.00 pursuant to Debtors' schedules. There are liens on the Property
23 currently totaling \$269,269.43. It is clear that there is no equity in the Property. In addition, the
24 Property must be essential for an effective reorganization that is in prospect (*See United Sav.*
25 *Asso. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 376 (U.S. 1988). The
26 Debtors have failed to make payments on the obligation and the Property is not necessary for an
27 effective reorganization that is in prospect.

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1 In addition, and in the event that the Court continues the Automatic Stay, Movant
2 will seek adequate protection of its secured interest pursuant to 11 U.S.C. Sections 361 and 362,
3 including a requirement that Debtor reinstate all past arrearages and immediately commence
4 regular monthly payments.

5 Furthermore, Movant will seek to have Debtors sequester and account for any
6 rents collected from the subject real property, pursuant to 11 U.S.C. Section 546(b), and Section
7 363. Pursuant to this motion, Movant provides Debtors with notice of its security interest in said
8 rents, and objects to their use without court authorization.

9 Furthermore, Movant will also seek attorney's fees and costs incurred in bringing
10 the Motion. Movant requests such fees pursuant to the Note and Deed of Trust securing
11 Movant's claim or pursuant to 11 U.S.C. Section 506(b). Post-petition attorney's fees and costs
12 for the within motion may be added to the outstanding balance of the subject Note pursuant to
13 Travelers Casualty v. Pacific Gas and Electric Co., 549 U.S. 443 (2007).

14 In addition, Movant requests such further relief as is just.

15 In the event neither the Debtor nor Debtors' Counsel or any interested party
16 appears at a hearing on this Motion, the Court may grant relief from the Automatic Stay
17 permitting moving party to foreclose on the Debtors' real Property located at **137 14th Street,**
18 **Eureka, CA 95501**, which is legally described in the Deed of Trust attached to the Declaration
19 of KARIN MURPHY as Exhibit "3," under all defaults, including any pre-petition defaults, and
20 thereafter obtain possession of such Property without further hearing, or may enter an order
21 conditioning the continuance of automatic stay.

22 WHEREFORE, Movant prays for judgment as follows:

- 23 1. For an order granting relief from the Automatic Stay, permitting Movant to take all
24 steps necessary under State or Federal law to commence or complete its foreclosure
25 under the Deed of Trust and thereafter take possession of the subject Property
- 26 2. For an order allowing Movant to seek and collect any damages ordered by any Court
27 for the wrongful retention of the subject Property after foreclosure of the subject
28 Property.

- 1 3. For an order permitting Movant to offer and provide Debtors with information
- 2 regarding potential Forbearance Agreement, Loan Modification, Refinance
- 3 Agreement, or other Loan Workout/Loss Mitigation Agreement, and to enter into
- 4 such agreement with Debtors if approved by Movant.
- 5 4. For an order regarding adequate protection of Movant's interest as this Court deems
- 6 proper.
- 7 5. For attorneys' fees and costs for suit incurred herein.
- 8 6. For an order waiving the 14-day stay described in Bankruptcy Rule 4001(a)(3).
- 9 7. For such relief as this Court deems appropriate.

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11 SCHEER LAW GROUP, LLP

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13 DATED: March 21, 2017

/s/ REILLY D. WILKINSON
#250086